

## 21 C.J.S. Courts § 117

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### Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

### III. Creation and Constitution; Officers of Courts

#### A. Creation, Organization, and Abolition of Courts

##### 3. Jurisdiction and Transfer of Cases; Judicial Departments and Districts; Divisions of Courts

##### § 117. Transfer of cases and jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Courts](#)  52

**If such is the intent of the law, cases may and will be transferred from the original to the new or superseding court; the new court has such powers and jurisdiction as is vested in it by law.**

In the absence of constitutional restriction,<sup>1</sup> cases may and will be transferred where they come within the terms of a constitution or statute providing therefor.<sup>2</sup>

Indeed, unless a contrary intent is expressed in the constitutional or statutory provision,<sup>3</sup> cases pending in abolished courts are transferred by operation of law to the new courts.<sup>4</sup> There is no necessity for any certificate<sup>5</sup> or order transferring them,<sup>6</sup> and no filing fee is imposed with respect to such a transfer.<sup>7</sup> The objective of statutory revisions implementing trial court unification is to preserve existing rights and procedures despite unification.<sup>8</sup>

### *Appeals.*

While the abolition of an inferior court may abridge the appellate jurisdiction previously possessed by another court over its judgments,<sup>9</sup> it does not have such effect as to cases pending on appeal at the time of abolition.<sup>10</sup> Where a new appellate district is created, or where there has been a redistricting of existing appellate districts, pending appeals will be transferred to the appellate court having jurisdiction when a statute<sup>11</sup> or valid order of the supreme court<sup>12</sup> so provides. In the absence of such a statute or order, appeals which have been perfected prior to the effective date of the statute will not be transferred to the court having jurisdiction under the new statute.<sup>13</sup>

### *Authority of new or superseding court.*

The authority or jurisdiction of the new or superseding court depends, of course, on that vested in it by the constitutional or statutory provision in question.<sup>14</sup> Accordingly, it may be vested with the powers and jurisdiction formerly resting in the old or superseded court,<sup>15</sup> as well as the jurisdiction formerly possessed by itself, if it was already an existing court.<sup>16</sup>

If such is the intent of the law, the new court will obtain and may proceed to exercise jurisdiction over cases lawfully transferred to it.<sup>17</sup> Where a statute expressly so provides the superseding court will assume jurisdiction over the cases pending in the courts that it supersedes without the necessity of dismissing and refiling those cases.<sup>18</sup>

### *Authority of old or superseded court.*

In the absence of a clearly expressed intention, a statute depriving a court of jurisdiction does not operate retrospectively to suspend pending proceedings.<sup>19</sup> If the statute is not imperative in requiring the transfer of all causes, the original court may continue to exercise jurisdiction over an action commenced in it.<sup>20</sup> Where a statute embodies such an intention, a court, the existence of which is terminated, is allowed to remain in existence for the purpose of disposing of pending cases if no new court is established to take its place or to transfer pending cases to a court of appellate jurisdiction.<sup>21</sup>

On the other hand, a court may not entertain proceedings over which its jurisdiction has been terminated,<sup>22</sup> and where the jurisdiction of the old or superseded court has been completely terminated, pending cases should be transferred to the new court.<sup>23</sup> The mere fact that the power

of a court to deal with certain questions has been terminated does not deprive it of jurisdiction to set aside a former erroneous decree as to such matters.<sup>24</sup>

The transfer of cases from the court of claims from the circuit court to the court of appeals did not violate the separation of powers doctrine where the court of claims was a court of legislative creation, transfer did not alter the general jurisdictional makeup of the circuit court, and transfer did not create a new trial court requiring constitutional amendment.<sup>25</sup>

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## Footnotes

- 1 Mo.—[State ex rel. Allen v. Trimble](#), 321 Mo. 230, 10 S.W.2d 519 (1928).
- 2 Ala.—[McDaniel v. Youngblood](#), 201 Ala. 260, 77 So. 674 (1918).
- 3 Fla.—[Segel v. Staiber](#), 106 Fla. 946, 144 So. 875 (1932).
- 4 Okla.—[State v. Superior Court of Okl. County](#), 1913 OK 637, 40 Okla. 120, 136 P. 424 (1913).
- 5 Ala.—[Thompson v. Johnson](#), 201 Ala. 315, 78 So. 91 (1918).
- 6 N.J.—[Belgacem v. Veneziano](#), 218 N.J. Super. 6, 526 A.2d 1090 (App. Div. 1986).
- 7 Fla.—[Easterlin v. State](#), 43 Fla. 565, 31 So. 350 (1901).
- 8 N.Y.—[People v. Hoch](#), 150 N.Y. 291, 44 N.E. 976 (1896).
- 9 N.J.—[Belgacem v. Veneziano](#), 218 N.J. Super. 6, 526 A.2d 1090 (App. Div. 1986).
- 10 Cal.—[Lempert v. Superior Court](#), 112 Cal. App. 4th 1161, 5 Cal. Rptr. 3d 700 (6th Dist. 2003).
- 11 Fla.—[Ferlita v. Figarrota](#), 106 Fla. 578, 145 So. 605 (1932).
- 12 Fla.—[Ferlita v. Figarrota](#), 106 Fla. 578, 145 So. 605 (1932).
- 13 Tex.—[Keator v. Whittaker](#), 104 Tex. 628, 143 S.W. 607 (1912).
- 14 Tex.—[Kennedy v. Wheeler](#), 256 S.W. 315 (Tex. Civ. App. Austin 1923).
- 15 Tex.—[Fry v. Barron](#), 117 Tex. 170, 299 S.W. 230 (Comm'n App. 1927).
- 16 N.J.—[Coles v. First Baptist Church of Collingswood](#), 59 N.J.L. 311, 35 A. 907 (N.J. Sup. Ct. 1896).
- 17 N.C.—[Reynolds v. Reynolds](#), 208 N.C. 578, 182 S.E. 341 (1935).
- 18 Or.—[In re Norman's Estate](#), 159 Or. 197, 78 P.2d 346 (1938).
- 19 Mo.—[City of Kansas City, Mo. v. Fasenmeyer](#), 907 S.W.2d 195 (Mo. Ct. App. W.D. 1995).
- 20 N.Y.—[Hertzberg v. Hertzberg](#), 251 A.D. 273, 296 N.Y.S. 169 (1st Dep't 1937).

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Ohio—[State v. Human](#), 56 Ohio Misc. 5, 10 Ohio Op. 3d 164, 381 N.E.2d 969 (Mun. Ct. 1978).

**"Pending"**

A mother's paternity action against the father was not "pending" on the effective date of the statute abolishing family courts and transferring all pending family-court cases to the county court, and thus, the statute did not operate to transfer the case to county court, since the action had ended by the enactment of the statute, and no motions or other formal proceedings seeking to modify the judgment were pending.

Miss.—[Helmert v. Biffany](#), 842 So. 2d 1287 (Miss. 2003).

19

Cal.—[Hopkins v. Anderson](#), 218 Cal. 62, 21 P.2d 560 (1933).

**Case filed prior to new court's establishment**

Tex—[Boyd v. Dean](#), 515 S.W.2d 753 (Tex. Civ. App. Beaumont 1974).

20

Cal.—[Hopkins v. Anderson](#), 218 Cal. 62, 21 P.2d 560 (1933).

Ohio—[Smedley v. State](#), 95 Ohio St. 141, 115 N.E. 1022 (1916).

21

Ohio—[State v. Human](#), 56 Ohio Misc. 5, 10 Ohio Op. 3d 164, 381 N.E.2d 969 (Mun. Ct. 1978).

22

U.S.—[Henrietta First Moon v. Starling White Tail](#), 270 U.S. 243, 46 S. Ct. 246, 70 L. Ed. 565 (1926).

Fla.—[State ex rel. Whyte v. Gray](#), 116 Fla. 510, 156 So. 493 (1934).

23

Ind.—[Warner v. State](#), 92 Ind. App. 220, 181 N.E. 45 (1931).

24

U.S.—[Ya-koot-sa v. U.S.](#), 262 F. 398 (C.C.A. 9th Cir. 1920).

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Mich.—[Okrie v. State of Mich.](#), 306 Mich. App. 445, 857 N.W.2d 254 (2014).

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